

DECISION



64956
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-210000

DATE: April 22, 1983

MATTER OF: Honeywell, Incorporated

DIGEST:

1. When services covered by sub-items are material, and nothing on face of bid indicates that item prices are all-inclusive, omission of prices for sub-items cannot be waived as a minor informality or corrected after bid opening. Rather, bid must be considered nonresponsive.
2. Cancellation of formally advertised solicitation after bid opening requires a cogent and compelling reason, but is appropriate when fair and equal competition--or competition on an equal basis--appears to have been thwarted.
3. When incumbent for repair and maintenance contract has records as to number of service calls required in past years, but solicitation includes neither historical data nor estimated number of calls required in future, other bidders lack information necessary for intelligent preparation of their bids, and the incumbent gains a competitive advantage.
4. When bidder quotes hourly rates for service calls, but solicitation contains neither historical data nor estimated number of calls, hourly rates cannot be extended or properly evaluated under solicitation that indicates that prices for such calls will be considered in determining lowest total bid price.

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Honeywell, Inc. protests the cancellation of a solicitation for repair and maintenance of an installed system for control of heating, hot water, steam, and air conditioning at the U.S. Air Force Hospital, Plattsburgh Air Force Base, New York. We deny the protest.

Since at least 1979, Honeywell has provided the services in question under sole-source contracts justified on grounds that it was the only firm qualified to service Minneapolis Honeywell equipment. The record reveals that during July 1982, a number of other contractors called officials at Plattsburgh and indicated that they also could provide these services. The Air Force therefore issued invitation for bids No. F30636-82-80053 on September 13, 1982, to seven large and small businesses, including Honeywell.

The solicitation included three line items, covering services during a base and 2 option years. The bid price for each of these items was to include two preventative maintenance inspections--calibration in January and valves in May. In addition, under each item were two sub-items, one covering service calls requested by the Government and made during regular working hours and the other covering calls after working hours and on weekends and holidays. Prices for all basic and option quantities were to be evaluated.

Only two firms, Honeywell and Chilton Electric, Inc., submitted bids on October 13, 1982; these were as follows:

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	<u>Honeywell Price</u>	<u>Chilton Price</u>
	<u>Unit Extended</u>	<u>Unit Extended</u>
0001 (2 inspections, base year)	\$12,200	\$4,200 \$8,400
0001AA (service calls, regular hrs.)		\$30 hr. \$30 hr.
0001AB (service calls, after hours)		\$40 hr. \$40 hr.
0002 (2 inspections, 1st option year)	\$15,515	\$4,500 \$9,000
0002AA (service calls, regular hours)		\$32.50 \$32.50 hr.
0002AB (service calls, after hours)		\$42.50 \$42.50 hr.
0003 (2 inspections, 2d option year)	\$16,601	\$4,800 \$9,600
0003AA (service calls, regular hours)		\$35 hr. \$35 hr.
0003AB (service calls, after hours)		\$45 hr. \$45 hr.
TOTAL	<u>\$44,316</u>	<u>\$27,000*</u>

*Chilton's total bid price did not include the amounts listed for service calls, although the hourly rate was inserted in both the unit and extended price columns.

Because of the great disparity in total bid prices, the Air Force reviewed the solicitation and determined that it was deficient, warranting rejection of both bids and cancellation of the solicitation in accord with Defense Acquisition Regulation § 2-404 (DAC 76-17, September 1, 1975). Specifically, the Air Force found that the solicitation did not contain an estimated number of service calls and that it did not clearly indicate whether such calls would begin when the mechanic left the contractor's facility or when that individual arrived at the job site. In addition, the solicitation did not indicate who was responsible for providing repair parts or how they would be costed.

Honeywell protested the cancellation to the Air Force, arguing that it understood exactly what was required and that its prices for items 0001, 0002, and 0003 covered all service calls and all parts. It also argued that the Air Force knew this from its course of dealings with Honeywell, and suggested that if Chilton had not understood what the solicitation required, it should have inquired before bid opening. To cancel after prices had been exposed, Honeywell concluded, was both arbitrary and unfair. The contracting officer, however, affirmed the decision to cancel, and Honeywell's protest to our Office followed.

Although the contracting officer did not consider the responsiveness of the bids received before deciding to reject all bids, we point out first that Honeywell's was not responsive because it was not clear from the face of the bid that the item prices included service calls. Honeywell's arguments to the contrary ignore the fact that in prior sole-source solicitations, which Honeywell has submitted for our review, the Air Force requested only a lump sum bid for all repair and maintenance, and did not break out service calls. Moreover, the terms and conditions of Honeywell's standard service agreement, which specify that Honeywell will repair or replace worn or failed components and parts and will provide emergency service as needed, could have been incorporated into prior contracts during negotiations.

This, however, was a formally advertised procurement, with a single award to be made to the low, aggregate bidder. In order for Honeywell's bid to be responsive, it was required to include a price for every item and sub-item, or otherwise to indicate that the item prices were all-inclusive, so that Honeywell would have been legally bound to make service calls at no additional charge. See Andrea Radio Corporation, B-198240, September 2, 1980, 80-2 CPD 165 and cases cited therein. The service calls covered by the sub-items are obviously material to the Air Force, and the omission of prices for them cannot be waived as a minor informality or corrected after opening. Allowing Honeywell to assert, after opening, that its prices were all-inclusive would give it an opportunity to make a nonresponsive bid responsive, thus compromising the integrity of the

competitive bidding system. See generally Central Certificate Registry, Inc., et al., B-209089, March 28, 1983, 83-1 CPD ____ (discussing omission of item prices).

If, as Honeywell indicates, it believes it would have been prejudiced by disclosing to its competitors what portion of its total bid price was allocated to service calls, its proper remedy was to file a preopening protest. Any protest against the requirement for breaking out the price of service calls is now, of course, untimely under our Bid Protest Procedures, 4 C.F.R. § 21.2 (1983).

As for the allegedly improper cancellation, we frequently have stated that after bids have been opened and prices exposed, such action requires a cogent and compelling reason. Cancellation is definitely appropriate, however, when fair and equal competition--or competition on an equal basis--appears to have been thwarted. See Downtown Copy Center, B-206999.6, December 6, 1982, 62 Comp. Gen. ____, 82-2 CPD 503 and cases cited therein.

Here, Honeywell had the benefit of at least 3 years' experience at Plattsburgh, as well as records of the number of service calls, both during and after regular working hours, made during performance of its prior contracts. Since the Air Force neither made this historical data available to all bidders nor provided them with an estimated number of service calls, other bidders lacked the information necessary for intelligent preparation of their bids, Honeywell gained a competitive advantage, and bidding was not on an equal basis.

In addition, there was no way that Chilton's bid could have been evaluated or compared with Honeywell's, even if the latter had been responsive. Without estimates as to the number, duration, and time of service calls, or a meeting of the minds as to when those calls would begin and end, the Air Force could not have extended or properly evaluated Chilton's hourly prices for service calls. An evaluation of only the totals shown for items 0001, 0002, and 0003 would not have been in accord with the solicitation and would not have considered all elements of cost to the Government.

Finally, we cannot speculate as to the number of other bidders who may have been constrained from bidding due to lack of information. We agree with the Air Force,

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however, that the solicitation probably impeded competition and that an award under it would not have served the Government's needs. We conclude that the contracting officer properly exercised his discretion in canceling the solicitation.

Honeywell's protest is denied.

for *Harry R. Van Cleave*
Comptroller General
of the United States